

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of KAYLA TAYLOR MAYES,
Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

BRIDGETTE MAYES,

Respondent-Appellant.

UNPUBLISHED
September 1, 2009

No. 289750
Wayne Circuit Court
Family Division
LC No. 90-287592-NA

Before: Saad, C.J., and Whitbeck and Zahra, JJ.

PER CURIAM.

Respondent Bridgette Mayes appeals as of right the December 2008 order terminating her parental rights to her minor child, Kayla Mayes, pursuant to MCL 712A.19b(3)(a)(ii) (desertion for 91 or more days), (3)(c)(i) (conditions that led to adjudication continue to exist and are not likely to be rectified within a reasonable time), (3)(g) (parent, without regard to intent, fails to provide proper care or custody for the children), and (3)(j) (likelihood of harm if child returned to parent). We affirm.

I. Basic Facts And Procedural History

Approximately five months after Kayla Mayes was born in July 1999, an allegation was made that Mayes had abandoned the child. Kayla Mayes was placed in foster care, but was returned to her mother after Mayes completed a program with Families First. The case was dismissed in March 2000. However, in January 2007, the Department of Human Services filed another petition for jurisdiction over Kayla Mayes, apparently after Mayes started screaming at an apartment maintenance worker.

The 2007 petition alleged that Mayes, who had been involuntarily committed for a short time due to her ongoing mental illness,¹ had moved to Mt. Pleasant because she thought that her

¹ The petition and the initial service plan note that Mayes receives SSI benefits for manic depression. Subsequently, Mayes was apparently preliminarily diagnosed with schizoaffective and delusional disorders.

boyfriend was following her, and had placed cameras in her apartment. Mayes removed Kayla Mayes from school, apparently believing that the boyfriend was sending people to the school to talk to Kayla Mayes. The Department's caseworker visited Mayes' home and reported that it had nothing in it, including furniture. Kayla Mayes was sleeping on the floor with a blanket. All the light fixtures and outlets in the home were covered with cardboard and plastic. The home contained no food, and Kayla Mayes would steal donuts from the apartment office to eat. It was also reported that Kayla Mayes and Mayes wore the same clothes for "days on end." The caseworker also stated that Mayes appeared emotionally/mentally unstable when the caseworker spoke with her.

Kayla Mayes was initially removed from Mayes' care and placed with her great aunt. Mayes was taken into protective custody and involuntarily committed for 90 days through community mental health. A preliminary hearing was held in Isabella County in January 2007, and the trial court found that probable cause existed to support one or more of the allegations in the petition. In May 2007, the case was transferred to Wayne Circuit Court after Mayes was released and moved back to Detroit. During a July 2007 pretrial hearing, Mayes admitted to a number of allegations in the petition, and the trial court found that the statutory grounds alleged in the petition were proven. The trial court appointed a guardian ad litem for Mayes and developed a treatment plan. The plan required Mayes to obtain suitable housing, submit to a psychological and psychiatric evaluation, attend individual therapy and parenting classes, maintain contact with the foster care worker, and visit Kayla Mayes on a regular basis.

At a September 2007 hearing, Mayes' counsel indicated that Mayes had been complying with visitation. The psychiatric evaluation, which had been postponed while the trial court tried to obtain Mayes' prior medical records, was again postponed because the hospital refused to comply with the court order to release them without Mayes' permission. Mayes indicated that she would give her permission to release the records.

Mayes was not present at a November 2007 hearing. But the Department's caseworker testified that Mayes had visited Kayla Mayes and that Mayes' behavior was appropriate. She stated that Mayes and Kayla Mayes appeared to be bonded with one another.

At a February 2008 hearing, the Department's caseworker testified that Mayes had abandoned her apartment and disappeared "as of prior to Christmas." The trial court ordered the Department to check whether Mayes had been admitted to the hospital again. At the next hearing in May 2008, the Department's caseworker testified that she had not had any contact with Mayes. Family members had told the caseworker that they had seen Mayes at a funeral in February 2008, and one family member received word from Mayes in March that she had moved to Georgia, where she was "going to try to get herself together." Mayes did not provide an address or phone number. The caseworker also testified that Mayes' last official visit with Kayla Mayes was in August 2007 and that Mayes' last visit with her therapist was in December. The caseworker further stated that Mayes severely damaged her apartment when she left it in December. The trial court ordered the Department to file a petition for termination of Mayes' parental rights.

During a July 2008 permanency planning hearing, a number of witnesses testified that Mayes had not contacted anyone since December 2007. Mayes attended a subsequent continued adjudicatory hearing in October 2008. At that time, Mayes' guardian ad litem indicated that

Mayes wished to relinquish her parental rights to Kayla Mayes. However, during a hearing for this purpose held the next day, Mayes indicated that she wished to proceed to trial.

During a December 2008 adjudicatory hearing, Rhiana Benberry, a foster care worker for The Children's Center, testified that she had been involved in the case since June 2008. Benberry testified that Mayes currently resided in a motel, which was not a suitable place for Kayla Mayes to reside. Benberry also stated that she did not think that Mayes would be able to obtain suitable housing within a reasonable time.

Benberry also testified that Mayes had undergone a psychological evaluation in November 2008, but that the service provider was still trying to coordinate a psychiatric evaluation, a process made more difficult by the fact that Mayes did not have a phone. In the evaluation, Mayes apparently was preliminarily diagnosed with schizoaffective and delusional disorders. Benberry said that the psychological evaluation showed that Mayes had significant untreated symptoms that would negatively impact Kayla Mayes's health and safety. Although the report acknowledged that Mayes scored highest in the area of communicating with children and could verbalize proper parenting skills, it also stated that Mayes' symptoms "appear[] to have impeded her ability to implement practical application of that knowledge with respect to the health and safety issues regarding her children." Benberry stated that she believed Kayla Mayes would be at risk if returned to Mayes because Mayes had not addressed the issues that brought Kayla Mayes into care. Benberry also testified that she thought that, based on Mayes' actions and the evaluation, Mayes might leave Kayla Mayes again were Kayla Mayes placed in her care.

Benberry also stated that Mayes was enrolled in parenting classes in October, but would be dropped if she missed one more class. Mayes began therapy in November 2008, and had seen the therapist on one occasion. Benberry testified that Mayes had not contacted any foster care worker from September 2007 until August 2008, and that Mayes last visited Kayla Mayes in September 2007. Mayes told Benberry that she stopped visitation because people were watching her and trying to hurt her and that she did not want to place Kayla Mayes in danger. Mayes also told Benberry that she had been hospitalized during the year, but did not reveal where. Benberry testified that Kayla Mayes was in placement with her great aunt, who wished to adopt her, and Benberry thought that this would be in Kayla Mayes' best interest.

Mayes testified that she successfully parented Kayla Mayes for seven years. Mayes maintained that she took Kayla Mayes to school and church, and provided her with food and clothing. She described her attendance at two parenting classes and her first therapy visit. Mayes testified that she had been hospitalized five times, each time for one month or longer, since Kayla Mayes had been placed into care. She remembered the name of only one facility. She also maintained that she attempted to contact the Department's caseworkers many times. She attempted to see Kayla Mayes at her aunt's house, but her aunt would not allow visitation. Mayes believed that she and Kayla Mayes had a bond. Mayes testified that she received social security benefits for depression, but also testified that this was not a "mental" issue. She admitted that she had been placed on medication and took it "as long as she was required to" but then stopped. As to the large amount of time she was not in contact with the Department, she claimed that she did not know how get in contact and that she had lost her attorney's phone number. She stated that the Department's caseworkers never tried to contact her, but she acknowledged that she did not have a phone.

Following the close of proofs, the trial court found that the Department had presented clear and convincing evidence of statutory grounds for termination. The trial court based its determination on Mayes' ongoing untreated mental issues and Mayes' lack of recognition that she requires treatment, her lack of progress with obtaining therapy or attending parenting classes, her year-long disappearance and her lack of visitation with Kayla Mayes, and her inability to maintain suitable housing or otherwise care for Kayla Mayes. The trial court acknowledged the record concerning Mayes' longstanding inability to care for her other children.² The trial court further found that it would be emotionally harmful to Kayla Mayes to continue to wait for Mayes "to recognize her needs and to get better" and to have Mayes repeatedly appear and disappear in Kayla Mayes' life; thus, the trial court found that it was in Kayla Mayes' best interest to have Mayes' parental rights terminated.

II. Statutory Grounds For Termination

A. Standard Of Review

To terminate parental rights, the trial court must find that the petitioner has proven at least one of the statutory grounds for termination by clear and convincing evidence.³ We review for clear error a trial court's decision terminating parental rights.⁴ A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made.⁵ We give regard to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it.⁶

B. Analysis

Mayes argues that the evidence, when viewed in its entirety, did not rise to the level of clear and convincing evidence and was therefore insufficient to justify the trial court's finding that the Department had established statutory grounds for termination. We disagree.

MCL 712a.19b(3)(a)(ii) provides that a court may terminate a parent's parental rights if it determines that "[t]he child's parent has deserted the child for 91 or more days and has not sought custody of the child during that period." The desertion cannot be involuntary.⁷ While Mayes' alleged institutional commitments could seemingly fall within the definition of an involuntary desertion, Mayes did not provide any evidence of when the commitments occurred,

² Mayes received extensive services for her older children in 1990 and from 1995 to 1998. And although these children apparently also received services during at least part of 2007 and 2008, they are not parties to the instant case.

³ MCL 712A.19b(3); *In re Sours Minors*, 459 Mich 624, 632; 593 NW2d 520 (1999).

⁴ MCR 3.977(J); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); *Sours*, *supra* at 633.

⁵ *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

⁶ MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

⁷ *In re B and J, Minors*, 279 Mich App 12, 19 n 3; 756 NW2d 234 (2008).

for how long they lasted, or even that they actually occurred. And even taking into account that Mayes' visitation privileges were suspended in July 2008, Mayes' desertion of Kayla Mayes lasted longer than 91 days. Mayes did not see Kayla Mayes from some time between August or September 2007 until February 2008, when Mayes apparently interacted with Kayla Mayes at a family funeral. Nor did Mayes visit Kayla Mayes from the time of the funeral until July of 2008, when Mayes' visitation privileges were suspended. Thus, the trial court properly determined that the Department presented clear and convincing evidence of this ground for termination of Mayes' parental rights.

Under MCL 712a.19b(3)(c)(i), a court may terminate a parent's parental rights if it determines that "[t]he conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age." Under MCL 712a.19b(3)(g), a court may terminate a parent's parental rights if it determines that "[t]he parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age." And MCL 712a.19b(3)(j) provides that a court may terminate a parent's parental rights if it determines that "[t]here is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent."

The Department presented clear and convincing evidence for each of the above-mentioned grounds for termination of Mayes' parental rights. Mayes' lack of suitable housing and care of Kayla Mayes' physical needs formed at least part of the rationale for the Department's intervention. Mayes' initial service plan required her to obtain suitable housing, submit to a psychological and psychiatric evaluation, attend individual therapy and parenting classes, maintain contact with the foster care worker, and visit Kayla Mayes on a regular basis. The Department presented evidence that Mayes complied with only the requirement that she obtain a psychological evaluation. She stopped visiting Kayla Mayes. She had no contact with the Department's caseworkers for approximately one year. Her belated attendance at parenting classes was sporadic. She attended one therapy session. She did not obtain suitable housing in the 17 months Kayla Mayes was in care.

In addition, the testimony concerning Mayes' mental health problems supported the trial court's findings. Mayes suffers from a serious mental illness that, by her admission, required a number of institutional commitments. The symptoms of her illness included paranoia and episodes of violent behavior. Yet, during trial, Mayes continued to maintain that she did not have a problem and did not see the usefulness of her medication. Given Mayes' lengthy history of services concerning Kayla Mayes and her other children, and Mayes' inability to recognize and treat her mental illness, we cannot find clearly erroneous the trial court's determination that the conditions which led to the adjudication here would continue for the foreseeable future, or that Mayes would be unable to provide proper care and custody for Kayla Mayes within a reasonable time. The evidence concerning Mayes' inability to provide care and custody, along with her untreated mental health issues, also supports the conclusion that it is reasonably likely that Kayla Mayes would be in danger of further harm if she were returned to Mayes, despite Mayes' obvious affection for Kayla Mayes.

We conclude that the trial court did not clearly err when it found that the Department presented clear and convincing evidence of the existence of grounds for termination of Mayes' parental rights under MCL 712a.19b(3)(a)(ii), (c)(i), (g) and (j).

III. Best Interests Determination

A. Standard Of Review

Once a petitioner has established a statutory ground for termination by clear and convincing evidence, if the trial court also finds from evidence on the whole record that termination is clearly in the child's best interests, then the trial court shall order termination of parental rights.⁸ There is no specific burden on either party to present evidence of the children's best interests; rather, the trial court should weigh all evidence available.⁹ We review the trial court's decision regarding the child's best interests for clear error.¹⁰

B. Analysis

Mayes contends that the trial court erred in its best interest analysis because there is no evidence that her mental issues will interfere with her ability to take care of Kayla Mayes and that she should be given the opportunity to prove that she can parent the child. We disagree.

We cannot conclude the trial court's decision was clearly erroneous. Mayes clearly has been unable to cope with her mental illness, and it has affected her ability to act as a parent to Kayla Mayes to the point where she would likely be unable to meet even Kayla Mayes' basic needs.

After her children have come within the jurisdiction of the family court, a parent, whether disabled or not, must demonstrate that she can meet their basic needs before they will be returned to her care. "If a parent cannot or will not meet her irreducible minimum parental responsibilities, the needs of the child must prevail over the needs of the parent."^[11]

The trial court's determination that Kayla Mayes needs stability was reasonable under the circumstances. Accordingly, the trial court did not clearly err in finding that termination of Mayes' parental rights was in the child's best interests.¹²

⁸ MCL 712A.19b(5); *Trejo, supra* at 350. We note that MCL 712A.19b(5) was recently amended such that the trial court must now find that termination of parental rights *is* in the child's best interests, 2008 PA 199, effective July 11, 2008, rather than finding that termination is *not* in the child's best interests.

⁹ *Trejo, supra* at 354.

¹⁰ *Id.* at 356-357.

¹¹ *In re Terry*, 240 Mich App 14, 28; 610 NW2d 563 (2000) (internal citation omitted).

¹² MCL 712A.19b(5); *In re Trejo, supra* at 356-357.

In sum, we conclude that the trial court did not err in terminating Mayes' parental rights to the child. Affirmed.

/s/ Henry William Saad
/s/ William C. Whitbeck
/s/ Brian K. Zahra